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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/825,752

04/16/2004

David Hung

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EXAMINER

BROWN, MICHAEL A

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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/825,752
Filing Date: April 16, 2004
Appellant(s): HUNG ET AL.

Theodore R. Allen
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed June 20, 2008 appealing from the Office action mailed January 7, 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

4,740,196	POWELL	4-1988
6,054,314	KIM	4-2000
6,221,622	LOVE	4-2001
6,413,228	HUNG et al.	7-2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2 and 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hung '228 in view of Love, and with Powell and Kim.

Hung discloses in col. 11, lines 65- col. 12, lines 40 a method for increasing a retrievable cell amount, substantially as claimed. However, Hung discloses massaging the breast. Love teaches in figures 1-7C a method for increasing a retrievable cell using a mild vacuum to the nipple to collect cells from the breast. Powell teaches in figures 1-3 using suctions and vibration to obtain milk from the breast. Kim teaches using vibration that includes ultrasound to collect cells from the body (col. 3, lines 46-59). It would have been obvious to one having ordinary skill in the art at the time that the

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invention was made that vibration as taught by Powell and Kim could be substituted for massaging as disclosed by Hung because vibration or massaging can be used to stimulate the breast and cause cells to come from the breast. Applying vibration to the breast duct would definitely increase the amount of cells that could be retrieved and collected from the breast duct. Massaging, vibrating and applying a vacuum to the body are interchangeable. All three are used to increase the flow of fluid from the breast (these fluids can include milk which will include cells). The vibration is applied externally to the breast as taught by Powell. Powell teaches applying warm water (heat) to the breast. Love and Hung teach collecting cells through ductal lavage. The massaging or vibration is applied externally and internally to the breast. In other words any massaging or vibration applied externally to the breast is inherently applied internally to the breast.

(10) Response to Argument

Appellant argues that Hung doesn't teach or suggest the use of vibration to increase a retrievable amount of cells collected from a breast duct. Appellant also argues that Powell, Kim nor Love remedies the deficiencies of Hung. However, Hung was relied upon to set forth the teaching of an environment of collecting cells from the breast duct via massaging the breast. Thus, the main issue here is whether massaging and vibration are equivalent when it comes to using either to assist in collecting cells from the body. Appellant argues that the force exerted by massaging is very different than the force exerted by vibration. However, Kim was relied upon to modify Hung's

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method with Kim's teaching of using vibration (col. 3, lines 46-55 and col. 4, lines 65—col. 5, lines 1-5) to collect cells from the body. Kim also teaches that a massaging unit can be used to provide vibration (col. 5, lines 1-5) to collect cells from the body. Thus, it is proper to substitute vibration for massaging because both can be used to loose tissue from the breast duct in order to collect cells. Further, the examiner would like to note that applicant's claims do not require a specific force exerted by the vibration to collect cells, therefore, with respect to appellant's argument that vibration and massaging are not equivalent, the examiner respectfully disagrees. Both massaging and vibration will apply a force to the tissue, therefore, the massaging and vibration techniques are analogous means to loosen cells. Both Hung and Love teach of collecting cells using a mild vacuum and ductal lavage to collect the cells from the tissue, which are both well known techniques in the art for collecting cells from a patient.

Appellant also argues that claim 1 requires that the vibration is applied internally to the breast duct. However, the massaging disclosed by Hung is applied inside of the breast and the vibration taught by Kim is applied internally to any body part (which of course can include a breast duct). In conclusion, massaging (kneading) provides a form of vibration that can be used to loosen cells within the body. Hung clearly discloses collect cells via massaging. Kim clearly teaches using a massaging unit to provide vibration internally to the body to collect cells from the body.

(11) Related Proceeding(s) Appendix

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No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Michael Brown/

Primary Examiner, Art Unit 3772

Conferees: Patricia Bianco

/Patricia Bianco/

Supervisory Patent Examiner, Art Unit 3772

/Angela D Sykes/

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